

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ANGELICA ULLOA,

Plaintiff,

– against –

CAROLYN W. COLVIN, acting  
Commissioner of Social Security,

Defendant.

**OPINION AND ORDER**

13 Civ. 4518 (ER)

**RAMOS, D.J.:**

Before the Court is the Report and Recommendation (“R&R”) dated November 17, 2014 of Magistrate Judge Henry B. Pitman, to whom this matter was referred for judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) denying Plaintiff Angelica Ulloa’s (“Plaintiff” or “Ulloa”) application for disability insurance benefits (“DIB”) and supplemental security income (“SSI”). In the R&R, Judge Pitman recommends that the Commissioner’s motion for judgment on the pleadings be denied. He further advises the Court to grant Plaintiff’s cross-motion for judgment on the pleadings to the extent of remanding the case to the Commissioner for further proceedings consistent with the R&R. For the reasons stated herein, the Court ADOPTS the R&R and directs the entry of judgment as recommended.

**I. Background**

On February 22, 2011, Plaintiff filed an application for DIB and SSI. R&R, Doc. 25 at 2. The Social Security Administration (“SSA”) denied her application based on its finding that Plaintiff was not disabled. *Id.* Following Plaintiff’s timely request for a hearing before an

Administrative Law Judge (“ALJ”), such a hearing was held and ALJ Gitel Reich confirmed the SSA’s determination that Plaintiff was not disabled. *Id.* at 2-3. Plaintiff subsequently requested and was denied review by the Appeals Council. *Id.* at 3. Upon the Appeals Council’s denial of her request for review, the ALJ’s decision became the final decision of the Commissioner on April 23, 2013. *Id.*

Plaintiff commenced the present action on June 26, 2013 seeking review of the Commissioner’s decision. *Id.* The Commissioner moved for a motion on the pleadings and Plaintiff later cross-moved for judgment on the pleadings as well. *Id.*

On November 17, 2014, Judge Pitman issued his R&R, recommending that the Commissioner’s motion be denied and Plaintiff’s cross-motion be granted to the extent of remanding the case to the Commissioner for proceedings consistent with his analysis. *Id.* at 37. Specifically, he found that the matter should be remanded due to the ALJ’s failure to develop the record and obtain additional records from Plaintiff’s treating physicians. *Id.* at 30, 31.

The R&R noted that objections, if any, would be due by December 4, 2014 and that failure to timely object would preclude later appellate review of any order of judgment entered. *Id.* at 37-38. Neither the Plaintiff, nor the Defendant filed objections. They have therefore waived their right to object to the R&R. *See Dow Jones & Co. v. Real-Time Analysis & News, Ltd.*, No. 14 Civ. 131 (JMF) (GWG), 2014 WL 5002092, at \*1 (S.D.N.Y. Oct. 7, 2014) (citing *Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir.1992); *Caidor v. Onondaga County*, 517 F.3d 601, 604 (2d Cir.2008)).

## **II. Standard of Review**

A district court reviewing a magistrate judge’s report and recommendation “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate

judge.” 28 U.S.C. § 636(b)(1)(C). Parties may raise “specific,” “written” objections to the report and recommendation “[w]ithin fourteen days after being served with a copy.” *Id.*; *see also* Fed. R. Civ. P. 72(b)(2). A district court reviews *de novo* those portions of the report and recommendation to which timely and specific objections are made. 28 U.S.C. § 636(b)(1)(C); *see also United States v. Male Juvenile (95-CR-1074)*, 121 F.3d 34, 38 (2d Cir.1997). The district court may adopt those parts of the report and recommendation to which no party has timely objected, provided no clear error is apparent from the face of the record. *Lewis v. Zon*, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008). The district court will also review the report and recommendation for clear error where a party’s objections are “merely perfunctory responses” argued in an attempt to “engage the district court in a rehashing of the same arguments set forth in the original petition.” *Ortiz v. Barkley*, 558 F. Supp. 2d 444, 451 (S.D.N.Y. 2008) (citations and internal quotation marks omitted).


### **III. Conclusion**

No party has objected to the R&R. The Court has reviewed Judge Pitman’s thorough R&R and finds no error, clear or otherwise. Judge Pitman reached his determination after a careful review of the parties’ submissions. Doc. 25 at 2-13. The Court therefore ADOPTS Judge Pitman’s recommended judgment regarding the motions for judgment on the pleadings for the reasons stated in the R&R and REFERS back to Judge Pitman future applications, if any are filed.

The parties' failure to file written objections precludes appellate review of this decision.  
*PSG Poker, LLC v. DeRosa-Grund*, No. 06 CIV. 1104 (DLC), 2008 WL 3852051, at \*3  
(S.D.N.Y. Aug. 15, 2008) (citing *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir.1997)).

It is SO ORDERED.

Dated: January 7, 2015  
New York, New York

  
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Edgardo Ramos, U.S.D.J.